

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEXANDER DUNETZ,

Defendant and Appellant.

B195588

(Los Angeles County
Super. Ct. No. BA283837)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Patricia M. Schnegg, Judge. Affirmed.

Linn Davis, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Alexander Dunetz (Dunetz) appeals the judgment entered following a jury trial which resulted in his conviction of attempted possession of a controlled substance (Pen. Code, § 664, Health & Saf. Code, § 11350, subd. (a)). The trial court suspended imposition of sentence and granted Dunetz 36 months probation. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

1. Facts.

a. The People's Case.

On the evening of May 11, 2005, Los Angeles Police Detective Jesus Martinez (Martinez) arrested an individual by the name of Juan Salazar, who was also known as “Beto,” for a crime involving narcotics. During a search of Beto, Martinez found a cellular telephone and approximately \$400 worth of heroin consisting of 11 “packs,” each of which contained 13 “heroin balloons.”

The cellular phone recovered from Beto rang frequently and, after a time, Martinez decided to answer it. The person on the “other end was a male” and said, “ ‘Hey Beto, I’m at Century and Slauson, McDonald’s parking lot.’ [The individual then] said he need[ed] 40.’ ” Martinez, who had been involved in over one thousand investigations regarding the sale, possession for sale and possession of narcotics, had participated in over 150 undercover purchases of narcotics and had testified as a narcotics expert on numerous occasions, believed the man who had made the call wished to purchase \$40 worth of heroin. Martinez told the man to meet him at the intersection of Beverly and Rampart, in the Tommy’s Hamburgers parking lot.

Martinez and his partner, Officer Jorge Trejo (Trejo), went to the parking lot at Tommy’s Hamburgers in plain clothes and an unmarked car. There, Martinez received another telephone call from the same individual he had spoken with earlier. When the man asked where Martinez was, Martinez told him he was sitting in the driver’s seat of his car and would wave his hand out the window so the man could find him. In response to Martinez’s wave, Dunetz approached the car.

Trejo, who had received extensive narcotics training, had made over 1,000 arrests for narcotics offenses, and had worked undercover as both a narcotics dealer and user, got out of the car and met Dunetz. Dunetz asked Trejo where Beto was and if their car was broken. Trejo “went along with the broken car[,] . . . agreed that [his] car was broken[,] [t]hen . . . asked [Dunetz] how much he wanted.” Dunetz responded that he wanted “40,” or \$40 worth of narcotics. After Trejo saw that Dunetz had two \$20 bills in his hand, Trejo asked Dunetz if he wanted “chiva,” which is “street vernacular for heroin.” Trejo showed to Dunetz two “facsimile heroin balloons,” or two “tightly package[d]” balloons each of which contained either a raisin, bean, or play-dough which had been rolled and packaged as though it were a “street drug.” Dunetz seemed a “little upset” and said, “ ‘You got that bland shit. Do you have the pure stuff?’ ” Trejo told Dunetz he did not have any, then handed the two balloons to Dunetz who, in exchange, handed to Trejo the two \$20 bills. When Dunetz commented, “ ‘[j]ust two balloons,’ ” Trejo handed back to Dunetz one of the \$20 bills and told him it was his “change.”

After the transaction, Trejo gave a prearranged signal to back-up officers who entered the parking lot in a marked patrol car and took Dunetz into custody.

b. *Defense Evidence.*

Dunetz testified in his defense. He stated he had known Juan Salazar, or Beto, for several years. The two men belonged to the same labor union and had worked on several construction jobs together. On the evening of May 11, 2005, Dunetz called Beto’s cell phone to make arrangements to meet Beto at a McDonald’s restaurant. Dunetz intended to assist Beto as he looked through newspaper advertisements for a job. After several seconds, Dunetz realized he was not speaking to Beto. However, since Beto did not always answer his phone, Dunetz assumed he was speaking with one of Beto’s brothers or cousins. The man speaking told Dunetz they were “stuck” at “Tommy’s joint” at the intersection of Beverly and Rampart. When Dunetz asked if they needed assistance, the man on the phone said, “ ‘Yes, please come by. Help us out.’ ”

Dunetz drove up Rampart to the Tommy’s restaurant, but did not see Beto. Dunetz went to a nearby public telephone to call Beto when he saw someone waving to

him from inside a parked car. When the voice on the other end of the phone told Dunetz he was waving to him, Dunetz hung up the phone and walked the approximately 45 feet to the car.

Trejo got out of the passenger side of the car and met Dunetz. Dunetz had never seen Trejo and asked, “ ‘Where’s Beto?’ ” After Trejo told Dunetz that Beto was “somewhere around here,” Dunetz asked what he could do to help. Trejo handed Dunetz a piece of paper with writing on it. Dunetz asked if the paper indicated “an address or phone number where Beto [was]” and Trejo responded, “ ‘Yes.’ ” Dunetz felt “some lumpy thing” inside the paper. He told Trejo he would copy down the information, then handed the paper back to Trejo, stating he did not need “whatever else” was there

At that moment, three Los Angeles Police Officers, two in uniform and one in plain clothes, drove into the Tommy’s parking lot in a marked patrol car. Two of the officers jumped out of the patrol car, grabbed Dunetz and placed him under arrest. Dunetz had not known that Beto sold drugs.

2. Procedural History.

On November 28, 2005, Dunetz was charged by information with attempted possession of a controlled substance, heroin, in violation of Penal Code section 664 and Health and Safety Code section 11350, subdivision (a).

At proceedings held on May 3, 2006, the trial court heard Dunetz’s *Pitchess* motion for discovery or disclosure of citizen complaints with regard to Officers Martinez and Trejo. (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531; see Evid. Code, § 1043.) Following an in camera hearing, the trial court granted the motion as to both officers and directed that the appropriate records be produced by May 10, 2006.

On June 5, 2006, Dunetz made a motion to proceed in propria persona (see *Faretta v. California* (1975) 422 U.S. 806). After the trial court thoroughly advised him of the dangers and pitfalls of self-representation, Dunetz waived his right to counsel and the trial court granted his motion.

The matter was called for trial on August 11, 2006. The trial court heard and granted the prosecutor’s motion to limit and exclude pursuant to Evidence Code section

402 evidence of a “Commissioner Rampart Report,” the police report prepared after Dunetz’s arrest and the transcript of the preliminary hearing.

On August 15, 2006, the jury found Dunetz guilty of attempted possession of heroin. At the request of Dunetz, sentencing proceedings were continued to September 8, 2006.

On September 27, 2006, Dunetz filed three motions for a new trial. He initially asserted the presentation of “false” or “fabricated evidence” in the form of facsimile heroin balloons, “prejudiced the jury” and caused him to be wrongly convicted. In his second motion, Dunetz argued he had not been given sufficient time to prepare for trial. In his third motion, Dunetz contended the prosecutor had violated his rights under *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*). The prosecutor responded to Dunetz first motion by stating that “balloons [were] actually recovered” and, although the balloons used at trial were not the balloons actually recovered from Dunetz, they were used as a “representation” and did not prejudice Dunetz in any way. As to Dunetz assertion he was not given sufficient time to prepare for trial, the prosecutor pointed out that Dunetz had received numerous continuances. Finally, with regard to Dunetz’s assertion his *Miranda* rights had been violated, the prosecutor stated, “[T]he defendant was representing himself. He was acting as an attorney. I had [the] opportunity to speak with him in regards to the case. I don’t believe there’s any violation of any *Miranda* rule.” After some discussion between the trial court and the parties, the trial court denied the motions.

At the September 27th proceedings, the trial court asked Dunetz if he wished to “do Prop. 36.” However, Dunetz refused to answer the court. The trial court then suspended imposition of sentence and granted Dunetz 36 months probation with certain terms and conditions including payment of a \$200 restitution fine (Pen. Code, § 1202.4, subd. (b)), a \$200 probation revocation restitution fine (Pen. Code, § 1202.44) and a \$20 court security assessment (Pen. Code, § 1465.8, subd. (a)(1)). When the trial court asked Dunetz if he understood the terms of his sentence, Dunetz stated, “I understand the terms of the sentence.”

On October 23, 2006, Dunetz's case was "called for further proceedings."
However, the matter was then "taken off calendar."

Dunetz filed a timely notice of appeal on November 21, 2006.

This court appointed counsel to represent Dunetz on February 21, 2007.

CONTENTIONS

After examination of the record, appointed appellate counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. By notice filed March 22, 2007, the clerk of this court advised Dunetz to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. No response has been received to date.

APPELLATE REVIEW

We have examined the entire record and are satisfied Dunetz's counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

CROSKEY, Acting P. J.

We concur:

KITCHING, J.

ALDRICH, J.